Lowe's Markets, Inc. d/b/a St. Helens Shop 'N Kart *and* Edna S. Tunnell

United Food & Commercial Workers, Local 555 (Lowe's Markets, Inc. d/b/a St. Helens Shop 'N Kart) *and* Edna S. Tunnell

United Food & Commercial Workers, Local 555 *and* Lowe's Markets, Inc. d/b/a St. Helens Shop 'N Kart. Cases 36–CA–6713, 36–CB–1669, and 36–CP–154

August 18, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On February 24, 1993, Administrative Law Judge Gordon J. Myatt issued the attached decision. The Respondent Union, the Respondent Employer, and the General Counsel have filed exceptions with supporting briefs and the Respondent Union has filed an answering brief.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

[1] On May 17, 1993, the Respondent Union filed a motion to include in the record a copy of a Federal court judgment in a matter involving some of the same parties. The Respondent Employer opposed the motion. We accept the Respondent Union's submission and take administrative notice of the court's judgment.

[2] The Respondent Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3rd Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge's findings that the Respondent Employer violated Sec. 8(a)(1), (2), and (3), and the Respondent Union violated Sec. 8(b)(1)(A) and (2) of the Act by entering into collective-bargaining agreements that contained union-security and dues-deduction clauses when the Union did not represent an uncoerced majority of employees in the units. The General Counsel has excepted to the judge's apparently inadvertent failure to include in his remedy a provision requiring the Respondents to make employees whole for dues or other fees unlawfully coerced or withheld from employees. The Respondent Employer also has requested that we state clearly the status of the collective-bargaining agreement entered into by the Respondents.

We agree with the General Counsel that the judge apparently inadvertently omitted the make-whole remedy from his Order and we correct the omission. The purpose behind the Board's routine remedy for similar violations of Secs. 8(a)(1) and (2) and 8(b)(1)(A) and (2) is to return the employees to the position they were in before the employer and the union entered into the illegal agreements. See, e.g., *Caro Bags, Inc*., 285 NLRB 656 (1987); *Safeway Stores*, 276 NLRB 944 (1985). For purposes of the Act, we view the collective-bargaining agreements as never having had legal effect.

In adopting the judge's finding that the petition signed by 18 of 22 unit employees on July 31, 1991, and requesting union representation does not demonstrate uncoerced majority support, Member Devaney relies particularly on the following facts in addition to those cited by the judge: (1) the Employer dictated the language of the petition at an employee meeting called by the Employer for the purpose of resolving the representation issue; and (2) the petition was returned to the Employer after it was signed by the employees, rather than to the Union.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Lowe's Markets, Inc. d/b/a St. Helens Shop 'N Kart, St. Helens, Oregon, and United Food & Commercial Workers, Local 555, their officers, agents, successors, assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph A,2,(b) and reletter the subsequent paragraph.

''(b) Jointly and severally with the Union, reimburse all unit employees for any moneys required to be paid pursuant to the August 2, 1991 collective-bargaining agreements between it and the Union, together with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).''

2. Insert the following as paragraph B,2,(a) and reletter the subsequent paragraphs.

''(a) Jointly and severally with the Union, reimburse all unit employees for any moneys required to be paid pursuant to the August 2, 1991 collective-bargaining agreements between it and the Employer, together with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).''

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

Accordingly, we assure you that:

WE WILL NOT assist or contribute support to United Food & Commercial Workers, Local 555, or any other labor organization, by coercing you to request the Union to become your collective-bargaining representative.

WE WILL NOT assist or contribute support to United Food & Commercial Workers, Local 555, or any other labor organization, and discriminate against you to encourage your membership in United Food & Commercial Workers, Local 555, or any other labor organization, by granting recognition to and executing collective-bargaining agreements with the Union, which contain union-security and dues-deduction authorization provisions, at a time when the Union does not represent an uncoerced majority of our employees.

WE WILL NOT give effect to, or in any manner enforcing the collective-bargaining agreements executed with United Food & Commercial Workers, Local 555 on August 2, l991, unless and until that Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of our employees. Nothing, however, shall require us to vary or abandon any wage, hour, seniority, or other substantive feature of our relations with you which has been established in the performance of these agreements with the Union, nor will you be prejudiced in the assertion of any rights you may have under the agreements.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from United Food & Commercial Workers, Local 555 as your representative for the purpose of collective bargaining, and cease to maintain or give effect the collective-bargaining agreements executed with the Union, unless and until that labor organization has been certified by the National Labor Relations Board as your exclusive collective-bargaining representative.

WE WILL jointly and severally with the Union, reimburse all unit employees for any moneys required to be paid pursuant to the August 2, 1991 collective-bargaining agreement between us and the Union, together with interest.

LOWE'S MARKETS, INC. D/B/A ST. HELENS SHOP 'N KART

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT accept recognition from Lowe's Markets, Inc. d/b/a St. Helens Shop 'N Kart as the bargaining representative of Lowe's employees at a time when we do not represent an uncoerced majority of the employees in appropriate bargaining units.

WE WILL NOT act as the exclusive collective-bargaining representative of Lowe's employees, unless and until we have been certified by the National Labor Relations Board as the exclusive representative of Lowe's employees in appropriate bargaining units.

WE WILL NOT give any effect to the collective-bargaining agreements executed with Lowe's on August 2, 1991, or any extension, renewal, or modification thereof.

WE WILL NOT accept any unlawful assistance or support from Lowe's in soliciting or acquiring union membership among Lowe's employees.

WE WILL NOT discriminate against or attempt to cause Lowe's to discriminate against employees, in violation of Section 8(a)(3) of the Act, by maintaining or implementing the terms of the union-security and dues-deduction authorization provisions of the collective-bargaining agreements executed with Lowe's on August 2, 1991.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL NOT picket, or cause to be picketed, the premises of Lowe's, where an object of such picketing is to force or require that Employer to recognize or bargain with us as the representative of its employees, at a time when we are not certified as such representative, and such picketing has been conducted without a petition filed under Section 9(c) of the Act within a reasonable period of time not to exceed 30 days from the start of such picketing.

WE WILL jointly and severally with the Employer, reimburse all unit employees for any moneys required to be paid pursuant to our August 2, 1991 collective-bargaining agreement with the Employer, together with interest.

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 555

Dale Cubbison, Esq., for the General Counsel.
Frank S. Wesson, Esq., of Portland, Oregon, for the Respondent St. Helens Shop 'N Kart.
Gene Mechanic, Esq., of Portland, Oregon, for the Respondent United Food & Commercial Workers Local 555.

DECSION

GORDON J. MYATT, Administrative Law Judge. Upon charges filed in Cases 36–CA–6713 and 32–CB–1669 by Edna Sue Tunnell, an individual, against Lowe's Markets, Inc., d/b/a St. Helens Shop 'N Kart (Lowe's) and United Food and Commercial Workers, Local 555 (the Union), respectively, and a charge filed by Lowe's in Case 36–CP–154 against the Union, the Regional Director for Region 19 issued a an order consolidating cases and a second amended consolidated complaint and notice of hearing on May 21, 1992. In substance, the consolidated complaint alleges that in

July 1991,[1] Lowe's unlawfully recognized and assisted the Union as the collective-bargaining representative of it employees in two separate units at a time when it knew the Union did not represent an uncoerced majority of the employees. Additionally, that as a result of this conduct, Lowe's and the Union entered into collective-bargaining agreements covering these employee units. That the agreements, in turn, contained union-security provisions requiring membership in good standing as a condition of employment, and dues-checkoff provisions requiring Lowe's to withhold union dues from unit employees' wages and remit them to the Union. Further, that on March 17, 1992, the Union commenced picketing Lowe's facility where an object of the picketing was to force Lowe's to recognize and bargain with the Union as the representative of the employees, and that the picketing continued for a period of time exceeding 30 days. The consolidated complaint alleges that by engaging in the above conduct the Respondent Lowe's has violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act (the Act). Also, that the above conduct of the Respondent Union violated Sections 8(b)(1)(A), 8(b)(2), and 8(b)(7)(C) of the Act.

Both Respondents filed answers to the consolidated complaint in which they admitted certain allegations, denied others, and specifically denied committing violations of the Act.

A hearing was held in this matter on June 18, 1992, in Portland, Oregon. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues. Counsel for the General Counsel gave oral argument at the conclusion of the hearing and briefs have been submitted by the Respondents. The oral argument and the briefs have been fully considered in arriving at this decision.

On the entire record in this matter, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Lowe's is an Oregon corporation with an office and place of business located in St. Helens, Oregon, where it is engaged in the business of operating a food store. During the 12-month period preceding the issuance of the complaint, Lowe's had gross sales in excess of $500,000 from its business operations. During the same period, Lowe's purchased and caused to be delivered to its St. Helens facility goods and materials valued in excess of $50,000, directly from sources outside the State of Oregon, or from suppliers within the State who in turn obtained such goods and materials directly from sources outside the State of Oregon. Accordingly, I find the Respondent Lowe's is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union, United Food and Commercial Workers, Local 555, is a labor organization within the meaning of Section 2(5) of Act.

[1] All dates herein refer to the year 1991 unless otherwise indicated.

III. THE ALLEGED UNFAIR LABOR PRACTICES

In mid-July, the Union began picketing at Lowe's facility. The picket signs of the Union urged the public not to patronize Lowe's store and displayed the following legend:

> Notice to the Public
> Do Not Patronize
> Shop 'N Kart Does Not Deserve
> the Patronage of Hard-Working
> Consumers
> Please Do Not Patronize Shop 'N Kart

The undisputed testimony indicates that as a result of the picketing, Lowe's business and customer count began to drop substantially. At no time during the picketing had the Union attempted to organize Lowe's employees or to secure signed authorization cards from them. In an effort to get the picketing to cease, Lowe's owner, Gene Lowe (Lowe), called Robert Patterson, the collective-bargaining director of the Union. Patterson informed Lowe that he would not negotiate with Lowe, and the Union's intention was to have a ''business impact'' on Lowe's operation and close it down.

Harold Higgingbottom, Lowe's store manager, contacted Lowe's attorney, Frank Wesson, about the situation on July 19. Wesson, in turn, filed an representation petition (RM) with the Board's subregional office and contacted Patterson about the picketing. Patterson reiterated that the Union's objective was to drive Lowe's out of business. At this point, Wesson indicated that Lowe's was willing to sign a standard area agreement with the Union. According to Wesson, Patterson stated that a contract could not be executed with Lowe's until the Union received a petition signed by the employees. The undisputed testimony reveals that Wesson asked for blank copies of the area agreement and Patterson agreed to supply them. Shortly thereafter, the Union delivered the agreements to Wesson's office.[2] Wesson testified that the contracts delivered by the Union were signed but undated. Patterson, on the other hand, testified that the agreements were unsigned at the time they were given to Wesson. According to Patterson, they were ''samples'' of the standard area contracts. Pursuant to a verbal arrangement with the Union, Lowe's withdrew the RM petition on July 26 and the Union ceased picketing.

On July 31, Lowe's held two meetings at its store with the employees on separate shifts during their working hours. At each meeting Lowe introduced Wesson to the employees and then left the meeting. Wesson testified that he advised the employees about his initial telephone conversation with Patterson concerning the picketing. Wesson acknowledged that he told the employees the Union wanted to put Lowe's out of business and if the picketing resumed and business decreased, employees would have to be laid off. He stated he further informed the employees that the Union was agreeable to signing a contract with Lowe's, provided the employees signed a petition requesting the Union represent them. According to Wesson, he told the employees the petition was necessary to back up the contracts. Wesson further stated he told the Employees that if they had any questions, they could

[2] The Union supplied agreements covering two separate units of the employees. One was for the meat department employees and the other was for the grocery, produce, and delicatessen employees.

contact the Board and he gave them the telephone number of the Subregion's Office. Wesson testified he dictated the language for a petition to Dan Heroux, the produce manager,[3] at the latter's request during the first meeting and then left the meeting. At the end of the second meeting, Heroux returned the petition containing signatures of 18 employees. (G.C. Exh. 5.) The undisputed testimony indicates there was a total of 22 employees in the combined units.

Employee Edna Tunnell, the Charging Party in Cases 36–CA–6713 and 36–CB–1669, testified that she attended the second meeting on July 31. According to Tunnell, Wesson told the employees to sign the petition requesting representation by the Union, and that the petition itself was circulated by the produce manager. Tunnell stated Wesson told the employees that if they did not sign the petition, the Union would continue picketing. She further stated that Wesson indicated Lowe's had signed, or would sign, a collective-bargaining agreement with the Union; although she could not recall which was the case with complete certainty. According to Tunnell, Wesson indicated Lowe's had done so, or would do so, to protect the employees. Tunnell asked why there were no representatives from the Union at the meeting. There is no indication in the record that she received a response to the inquiry. When the petition was circulated, Tunnell decided not to sign it.

Examination of the petition reveals that while it was signed by a number of the employees, several of them expressed unhappiness in doing so. In the margin to the left of his name, one employee noted, ''unfair.'' Another placed the expression ''union sucks'' next to his name. (G.C. Exh. 5, supra.)

After receipt of the petition, Lowe made several changes in each of the bargaining agreements and executed them. Wesson forwarded the signed contracts and a copy of the petition to the Union on August 2. Patterson stated that when the agreements and the petition were received, the union officials determined that a majority of the employees in each unit signed the petition and the union president then executed the contracts on behalf of the Union. Each of the agreements contained identical union-security provisions requiring employees to become and remain members in good standing of the Union, and for the payment of dues. (G.C. Exhs. 3 and 4.)

On August 22, the Union held two separate meetings with the unit employees at the union hall. Tunnell attended the afternoon meeting, which she stated was conducted by several representatives of the Union. According to Tunnell, the union representatives discussed the wages and benefits contained in the contracts and passed out information about the union dues the employees had to pay. Tunnell stated the union representatives told the employees attending the meeting that if they failed to join the Union and pay dues, they would not have jobs.

Tunnell O'Brien, a business representative of the Union, testified that she was present at the afternoon meeting with employees. O'Brien confirmed the union representatives discussed the provisions of the contracts with the employees, and stated the employees were given applications to join the Union. While O'Brien denied the employees were told they had to join the Union, she admitted the applications for membership required them to pay dues 30 days after the contracts were signed or face the loss of their jobs. Former employee Susan Schwirse testified that she attended one of the meetings at the union hall. Similar to the testimony of O'Brien, Schwirse denied that any of the union representatives said the employees had to join the Union or lose their jobs.[4]

In early November, Tunnell circulated a petition among the employees stating the employees' rights had been denied and requesting an election regarding union representation. (G.C. Exh. 2.) There is testimony from several witnesses for the Union that Tunnell's circulation of the petition was not entirely voluntary on her part. James Pohrman, formerly the meat department manager,[5] testified that Lowe instructed Tunnell to circulate the petition requesting an election. According, to Pohrman, Tunnell told him that she did not want to circulate the petition but that Lowe was ''getting on the employees about the Union,'' and she was doing so to protect her job. Former employee Evelyn Early[6] stated that in late October or early November, Lowe told her it was stupid to pay union dues since she would never get the money back, and that he had broken the contract with the Union. Early further testified that she was given the antiunion petition by Tunnell shortly after these comments by Lowe and she signed it. Shauna Hawkins, a current employee, testified that she was called at home by Tunnell and asked to come to the store and sign the antiunion petition. According to Hawkins, when she arrived, she observed Lowe talking to Tunnell, who had the petition in her hand. Hawkins stated Lowe then left and she signed the petition because she was afraid she would lose her job. On November 14, Tunnell filed the charges against Lowe's and the Union in the ''CA'' and ''CB'' cases that are a part of this consolidated matter.

On February 25, 1992,[7] the Union filed three separate unfair labor practice charges against Lowe's. Two of the charges related to the alleged discrimination against Schwirse and another employee, Renee Schwappe, in violation of Section 8(a)(1) and (3) of the Act. The other alleged, among other things, that Lowe's refused to comply with the terms and conditions of the collective-bargaining agreements (entered into on August 2, 1991) and sought to discourage employees from joining the Union in violation of Section 8(a)(1), (3), and (5) of the Act. On March 17, the Union commenced picketing Lowe's facility and distributing handbills. The picket signs stated the Lowe's had committed unfair labor practices against its own employees. The handbills also indicated that Lowe's had committed unfair labor practices against its employees. (G.C. Exh. 8.)

The three charges filed by the Union were dismissed by the Board's Regional Office on April 30. Prior to that, how-

[3] Under the terms of the collective-bargaining agreement, the produce manager was a member of the bargaining unit.

[4] Schwirse was employed as a checker by Lowe's from March to September 1991, and her surname was Smith at that time. Upon the termination of her employment, the Union filed charges alleging she was discriminatorily discharged. These charges, however, were subsequently dismissed by the Regional Director, infra.

[5] Pohrman was hired by Lowe's in September, and discharged on November 27 for not properly performing his job.

[6] Early worked for Lowe's from October 1991 to April 1992, when she quit to join the union picketing of the store.

[7] All dates hereafter refer to the year 1992 unless otherwise indicated.

ever, the Union sent Lowe's attorney a letter on April 20, which purported to set out the purpose of the picketing. The letter disclaimed the picketing to be in support of the Union's 8(a)(5) charges—refusal to bargain with the representative of the employees—but, rather, that the picketing was in protest of the alleged unlawful conduct against the employees as cited in the charges. (R. Exh. 1.) The picketing ceased on April 30 when the charges were dismissed by the Regional Director, and the Union appealed the dismissal of all the charges to the General Counsel. On June 2, the Union withdrew the appeal of the 8(a)(5) portion of the charges and on June 12, the General Counsel sustained the dismissal of the balance of the charges.

Concluding Findings

The threshold issue to be determined here is whether Lowe's granted recognition to the Union as the exclusive representative of its employees at a time when the Union did not represent an uncoerced majority of the employees in the two bargaining units. If this is found to be the situation, then the case law is clear that Lowe's and the Union have committed violations of the Act.

The seminal case, and indeed the only case cited by counsel for the General Counsel in his oral argument, is *Ladies' Garment Workers (Bernard Altman) v. NLRB*, 366 U.S. 731 (1961). There, the Supreme Court upheld the Board's finding that an employer violates Section 8(a)(2) and (1) and a union violates Section 8(b)(1)(A) of the Act, when the employer grants and the union accepts recognition at a time when the union does not represent a majority of the employees in an appropriate unit. From this holding evolved the well-established principle that a union must represent an uncoerced majority in the appropriate unit and when the employer renders unlawful assistance in establishing the union's majority, recognition and acceptance thereof violates Sections 8(a)(2) and (1) and 8(b)(1)(A) on the part of the employer and the union, respectively. *Mr. Glass Inc*., 220 NLRB 104 (1975) (employer's conduct in assisting the union to obtain majority status held a violation); *Seaview Manor Home*, 222 NLRB 596 (1976) (co-owners' solicitation of signatures on authorization cards and union acceptance of recognition based thereon held a violation); *S.M.S. Automotive Products*, 282 NLRB 36 (1986) (unlawful poll by employer to establish majority and union's acceptance of recognition held a violation by both); *Brown Transport Corp*., 296 NLRB 552 (1989) (employer's coercive conduct tainted authorization cards and union's acceptance of recognition thereafter violated the Act). See also *UPF Corp*., 309 NLRB 832 (1992); *Human Development Assn*., 293 NLRB 1228 (1989). In addition, when a collective-bargaining agreement, executed under these circumstances, contains union-security and dues-deduction authorization provisions, the participating employer and union further violate Sections 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the Act, respectively. *A To Z Maintenance Corp*., 309 NLRB 672 (1992); *Baby Watson Cheesecake*, 309 NLRB 417 (1992); *Human Development Assn*., supra; *A.M.A. Leasing*, 283 NLRB 1017 (1987).

Applying the above principles to the instant case, I find the record evidence establishes that Lowe's did in fact recognize the Union at a time when the Union did not represent an uncoerced majority. Further, that upon acceptance of such recognition, the parties entered into collective-bargaining agreements which contained union-security and dues-deduction authorization provisions.

First, the uncontroverted evidence in the record clearly establishes that when the Union began the initial picketing of Lowe's business, it made no attempt to organize any of the employees. Rather, the Union's only stated purpose was to reduce the volume of Lowe's business—euphemistically described by the Union's attorney as ''having an economic impact'' on Lowe's business. Thus, when Lowe's offered to sign an area agreement with the Union, none of the employees were represented by the Union nor were they, at that point, seeking to have the Union represent them. In addition, it is apparent from the testimony that the employees were well aware that business was declining as a result of the picketing and could impact on their job tenure.

Viewing the meetings between Lowe's attorney and the employees on July 31 in this context, I find the statements made to the employees to induce them to sign the supporting petition for union representation were coercive. This is especially true since the picketing had stopped on July 26, by prior agreement between Lowe's and the Union, and Wesson informed the employees at the meetings that if the picketing resumed and business declined, there would have to be layoffs. I find it reasonable, in these circumstances, to infer that the threat of possible loss of employment tended to have as coercive an impact on the employees as a direct statement that they would be fired if a majority did not sign the petition supporting the Union. I do not deem it necessary to determine here whether the employees were told that Lowe's *had already signed* or *would sign* a contract with the Union. The threat of possible loss of employment is sufficient to taint the signatures on the petition.

In view of the above, I find that Lowe's violated Section 8(a)(1) and (2) of the Act by coercing employees to sign a petition requesting the Union represent them as their bargaining representative. I also find that the Union in accepting such recognition, at a time when it did not represent an uncoerced majority of the unit employees, violated Section 8(b)(1)(A) of the Act. It follows, therefore, that by executing collective-bargaining agreements containing union-security and dues-deduction provisions, covering the two separate employee units, Lowe's further violated Section 8(a)(1), (2), and (3) and the Union further violated Section 8(b)(1)(A) and (2) of the Act. See *A To Z Maintenance Corp*., supra; *Baby Watson Cheesecake*, supra; *Human Development Assn*., supra; *A.M.A. Leasing*, supra.

The sole remaining issue is whether the picketing by the Union, from March 17 to April 30, 1992, is determined to be for recognitional purposes and in violation of Section 8(b)(7)(C) of the Act. In the circumstances found here, I conclude that a violation has been established.

The record demonstrates that when the Union commenced picketing in March, it had filed three separate charges against Lowe's; two of which alleged discriminatory conduct against two employees; and one of which alleged discouraging membership in the Union and a refusal to bargain by not complying with the terms of the contracts. The Union asserts that both the legend on the picket signs and the information on the handbills, distributed during the picketing, preclude any inference that picketing was for recognitional purposes. Rather, the Union contends that the picketing was in protest of unfair labor practices committed against the employees. To

bolster this claim, the Union points to its letter of April 20, in which it advised Lowe's that it was not picketing to support the 8(a)(5) charges based on the alleged refusal to abide by the terms of the collective-bargaining agreements. I find these contentions of the Union are not sufficient to negate the fact that an object of the picketing was indeed for recognitional purposes.

First, in *Stage Employees IATSE Local 15 (Albatross Productions)*,[8] the Board reiterated the principle of *Blinne Construction*[9] that even if there are legitimate purposes for picketing by a union, the prescriptions of Section 8(b)(7) apply ''if one of the union objects is recognitional.'' Thus, even assuming the alleged violations of Section 8(a)(1) and (3) existed at the time of the picketing (which is not the case here since all of the Union's charges were dismissed by the Regional Director and his actions were upheld on appeal), the Union was also clearly pursuing its 8(a)(5) charges alleging Lowe's was not complying with the terms of the executed agreements. Inasmuch as the 8(a)(5) charges lacked merit because the Union did not represent an uncoerced majority of the employees at the time of recognition, the record fully demonstrates the picketing was also in support of the Union's recognitional and bargaining claim. *Food & Commercial Workers Local 23*, 283 NLRB 116 (1987). To assert otherwise is to ignore the undisputed evidence in the record.

The picket signs and the union handbills stated Lowe's committed unfair labor practices against its own employees. Section 8(a)(5) charges carry a derivative violation of Section 8(a)(1) by interfering with the Section 7 rights of the employees to be represented by unions of their own choosing. In these circumstances, it is evident the picketing was in protest of all of the unfair labor practices alleged to have been committed by Lowe's. Nor does the disclaimer in the Union's letter of April 20 vitiate this fact. As noted in Lowe's brief, the picketing began March 17 and the purported disclaimer was nor until April 20—some 34 days after the picketing started. Since no timely election petition was filed during the course of the picketing and no meritorious 8(a)(5) charge existed, it is clear that ''Section 8(b)(7)(C) is applicable and a violation [of that section of the Act] has occurred.'' *Food & Commercial Workers Local 23*, supra.

In view of all of the above, I find and conclude that Lowe's and the Union violated Sections 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the Act, respectively, when Lowe's granted and the Union accepted recognition as the bargaining representative of the unit employees, and when Lowe's and the Union executed collective-bargaining agreements containing union-security and dues-deduction authorization provisions.[10] I further find and conclude that the Union violated Section 8(b)(7)(C) of the Act, when the Union picketed Lowe's from March 17 to April 30, 1992.

[8] 275 NLRB 744–745 (1985), and the cases cited therein at fn. 5.

[9] *Hod Carriers Local 840 (C. A. Blinne Construction)*, 135 NLRB 1153, 1167 (1962).

[10] I note the record is barren of any evidence indicating the dues-deduction authorization provisions were implemented by Lowe's and payments made to the Union.

CONCLUSIONS OF LAW

1. Respondent Lowe's Markets, Inc., d/b/a St. Helens Shop 'N Kart is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent United Food and Commercial Workers, Local 555 is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercing employees to sign a petition requesting the Union become their collective-bargaining representative and by granting recognition and executing collective-bargaining agreements with the Union, which contained union-security and dues-deduction authorization provisions, Respondent Lowe's has violated Section 8(a)(1), (2), and (3) of the Act.

4. By accepting recognition as the bargaining representative of Respondent Lowe's employees at a time when it did not represent an uncoerced majority of the unit employees, and by executing collective-bargaining agreements with Respondent Lowe's that contained union-security and dues-deduction authorization provisions, Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act.

5. By picketing Lowe's from March 17, 1992, to April 30, 1992, where an object of such picketing was for recognitional and bargaining purposes and no timely election petition had been filed, the Respondent Union has violated Section 8(b)(7)(C) of the Act.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Lowe's and Respondent Union have engaged in certain unfair labor practices within the meaning of Sections 8(a)(1), (2), and (3) and 8(b)(1)(A), 8(b)(2), and 8(b)(7)(C), respectively, of the Act, they shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent Lowe's shall be ordered to cease and desist from assisting the Respondent Union by threatening employees with loss of employment if a majority fail to request that the Respondent Union become their bargaining representative. Further, Respondent Lowe's shall be ordered to withdraw all recognition from the Respondent Union as the collective-bargaining representative of the unit employees, and the Respondent Union shall be ordered to cease and desist from acting as such representative.[11] The Respondents shall also be ordered to cease and desist from giving effect to, or in any manner enforcing the collective-bargaining agreements executed on August 2, 1991. However, nothing shall require Respondent Lowe's to vary or alter any substantive feature or term of its relations with the unit employees which have been established by performance under the agreements, or prejudice any rights the employees may have acquired under the agreements.

The Respondent Union shall be ordered not to picket, or cause picketing, at Lowe's where an object of such picketing

[11] Since there is no evidence in the record of implementation of the union-security and dues-deduction authorization provisions in the agreements, this matter is left to the compliance stage of these proceedings.

is to force or require that employer to recognize or bargain with the Respondent Union as the collective-bargaining representative of its employees at a time when the Respondent Union is not certified as such representative, and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the start of such picketing.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

A. The Respondent, Lowe's Markets, Inc., d/b/a St. Helens Shop 'N Kart, St. Helens, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting or contributing support to United Food and Commercial Workers, Local 555, or any other labor organization, by coercing employees to request the Union become their collective-bargaining representative.

(b) Assisting or contributing support to United Food and Commercial Workers, Local 555, or any other labor organization, by discriminating against employees to encourage membership in United Food and Commercial Workers, Local 555, or any other labor organization, and by granting recognition to and executing collective-bargaining agreements with the Union, which contain union-security and dues-deduction authorization provisions, at a time when the Union does not represent an uncoerced majority of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(d) Giving effect to, or in any manner enforcing the collective-bargaining agreements executed on August 2, 1991, unless and until the Respondent Union has been certified by the Board as the exclusive bargaining representative of the unit employees. Nothing, however, shall require Respondent Lowe's to vary or abandon any wage, hour, seniority or other substantive feature of its relations with the unit employees which has been established in the performance of the agreements with the Respondent Union, or prejudice the assertion by unit employees of any rights they may have under the agreements.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from United Food and Commercial Workers, Local 555 as the exclusive bargaining representative of its employees for the purpose of collective bargaining, and cease to maintain or give effect the collective-bargaining agreements executed with the Union, unless and until that labor organization has been certified by the Board as the exclusive representative of the employees.

(b) Post at its facility in St. Helens, Oregon, copies of the attached notice marked ''Appendix A.''[13] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent Lowe's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The Respondent United Food and Commercial Workers, Local 555, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition from Lowe's Markets, Inc., d/b/a St. Helens Shop 'N Kart as the bargaining representative of Lowe's employees at a time when the Respondent Union does not represent an uncoerced majority of the employees in appropriate bargaining units.

(b) Acting as the exclusive collective-bargaining representative of Lowe's employees, unless and until the Respondent Union has been certified by the National Labor Relations Board as the exclusive representative of the employees in appropriate bargaining units.

(c) Giving any effect to the collective-bargaining agreements executed with Lowe's on August 2, 1991, or any extension, renewal, or modification thereof.

(d) Accepting any unlawful assistance or support from Lowe's in soliciting or acquiring union membership among Lowe's employees.

(e) Discriminating against or attempting to cause Lowe's to discriminate against the unit employees, in violation of Section 8(a)(3) of the Act, by maintaining or implementing the terms of the union-security and dues-deduction authorization provisions of the collective-bargaining agreements executed on August 2, 1991.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(g) Picketing, or cause picketing at the premises of Lowe's, where an object of such picketing is to force or require that employer to recognize or bargain with the Respondent Union as the representative of its employees, at a time when the Respondent Union is not certified as such representative, and such picketing has been conducted without a petition filed under Section 9(c) of the Act within a reasonable period of time not to exceed 30 days from the start of such picketing.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at the Respondent Union's business offices and meeting places in St. Helens and Tigard, Oregon, copies of the attached notice marked ''Appendix B.''[14] Copies of the

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[14] See fn. 13, supra.

notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent Union's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to Regional Director for Region 19 sufficient copies of the notice for posting by the Lowe's, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.